

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

JAN 19 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2006-0250-PR
)	DEPARTMENT A
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
ROBERT GRIFFITH HOOVER,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-17537

Honorable Howard Hantman, Judge

REVIEW GRANTED; RELIEF DENIED

Robert Griffith Hoover

Tucson
In Propria Persona

V Á S Q U E Z, Judge.

¶1 Petitioner Robert Hoover was convicted in 1987 of first-degree murder, armed robbery, kidnapping, and theft by control. He was sentenced to life imprisonment for the murder conviction and to concurrent, aggravated prison terms of twenty-one years, twenty-one years, and ten years on the other convictions, to be served consecutively to the life term. His convictions and sentences were affirmed on appeal, and this court denied relief on his subsequent petition for review of the denial of relief he sought pursuant to Rule 32, Ariz.

R. Crim. P., 17 A.R.S. *State v. Hoover*, No. CR-87-0025-AP (memorandum decision filed Aug. 22, 1989); *State v. Hoover*, No. 2 CA-CR 2004-0344-PR (decision order filed June 22, 2005).

¶2 Hoover filed a second petition for post-conviction relief in 2005, arguing his sentences were excessive under the holding in *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004). The trial court summarily denied relief, and this petition for review followed. We review the court's ruling for an abuse of discretion, *State v. Decenzo*, 199 Ariz. 355, ¶ 2, 18 P.3d 149, 150 (App. 2001), and find none.

¶3 The trial court correctly found *Blakely* does not apply to Hoover's sentences because they were imposed and his case was final many years before *Blakely* was decided. *See State v. Febles*, 210 Ariz. 589, ¶ 1, 115 P.3d 629, 631 (App. 2005). And, contrary to Hoover's assertion, the state's failure to respond to his post-conviction petition did not constitute a concession of error entitling him to relief. The Arizona Rules of Civil Procedure do not apply in a post-conviction proceeding, *see* Rule 1.1, Ariz. R. Crim. P., 16A A.R.S., and neither does federal habeas law.

¶4 Although we grant the petition for review, we deny relief.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

JOHN PELANDER, Chief Judge

JOSEPH W. HOWARD, Presiding Judge